

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19292 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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SHAKARAJI @ KANTIJI MANGAJI THAKOR - Petitioner(s)

Versus

THE STATE OF GUJRAT & 3 - Respondent(s)

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Appearance :

MR AJ PATEL for Petitioner(s) : 1,
MR MR MENGDEY, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
MR.ALKESH N SHAH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/09/2005

ORAL JUDGMENT

1.Rule. Shri M.R.Mengdey, learned AGP waives service of Rule on behalf of Respondent No.1 and Shri A.N.Shah,

learned advocate waives service of Rule on behalf of respondent No.4.

2.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 15.7.2005 passed in Revision Application No.13/2005 in allowing the said Revision Application and quashing and setting aside the orders passed by the Prant Officer, Gandhinagar dated 17.6.2004 and the order passed by the Collector, Gandhinagar dated 13.12.2004 with respect to the revenue Entry No.4629 with respect to the land in question.

3.The dispute is with regard to the revenue Entry No.4629 with respect to the land bearing Survey Nos. 461, 462/1, 462/2, 474/1 and 474/2 situated at village Jundal, Taluka and District Gandhinagar and by virtue of the aforesaid revenue entry, the name of respondent No.4 herein was mutated in the revenue record. The said Entry came to be challenged by the petitioner herein before the Prant Officer, Gandhinagar and the Prant Officer, Gandhinagar set aside the order passed by the

Circle Officer, Gandhinagar dated 2.3.2001 in certifying revenue Entry No.4629 and passed an order to prepare the Entry afresh after considering the Pedhinama of deceased Mangaji Motiji Thakor and to mutate the names of his heirs. Being aggrieved and dissatisfied with the order passed by the Prant Officer, Gandhinagar the respondent No.4 preferred Revision Application before the Collector, Gandhinagar and the Collector, Gandhinagar by its order dated 13.12.2004 dismissed the said Revision Application. Being aggrieved and dissatisfied with the order passed by the Collector, Gandhinagar dated 13.12.2004 in dismissing the said Revision Application and confirming the order passed by the Prant Officer, Gandhinagar dated 17.6.2004 in cancelling revenue Entry No.4629 the respondent No.4 preferred Revision Application before the Joint Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No. 13/2005 and the Revisional Authority by its judgment and order dated 15.7.2005 allowed the said Revision Application and considering the fact that the Civil Suit is already pending at the instance of the petitioner herein for declaration and permanent injunction for establishing his rights in the land in question as heir of deceased

Mangaji Motiji Thakor, the Revisional Authority allowed the said Revision Application quashing and setting aside the order passed by the Prant Officer, Gandhinagar and the order passed by the Collector, Gandhinagar dated 17.6.2004 and 13.6.2004 respectively and restoring the revenue Entry No.4629. Being aggrieved and dissatisfied with the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 15.7.2005 passed in Revision Application No.13/2005, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Number of submissions have been made on merits on behalf of the respective parties. However, it is required to be noted that the dispute is with regard to the mutation entry in the revenue record and as held by the Hon'ble Supreme Court in case of ***Durgadas V/s. Collector and Others*** reported in **1996(5) SCC Page-618** as well as in case of ***Sankalchan Jaychandbhai Patel and others V/s. Vithalbhai Jaychandbhai Patel and others*** reported in **1996(6) SCC Page-433** and by this Court in case of ***Ratilal Chunilal Solanki & ors. V/s. Shantilal Chunilal Solanki & ors.*** reported in **1996(1) GLH Page**

816 as well as in case of *LRs. of Popat Khima Ramani & Others V/s. Collector, Rajkot & Others* reported in **2003(1) GLH Page-30** the entries in the revenue record or mutation entries do not confer any right, title or interest to the property and it is only an entry for the fiscal purpose of collection of land revenue and that revenue authority has no jurisdiction to decide the disputed question of title while considering the RTS proceedings when there is a dispute with regard to title, parties are required to be relegated to approach the Civil Court for establishing their rights and in the present case, the petitioner has already filed Regular Civil Suit No.353 of 1993 in the Court of Civil Judge (J.D.), Gandhinagar for establishing his rights as heir of deceased Mangaji Motiji Thakor and therefore, necessary entry can be modified and/or made on the basis of the judgment and order that may be passed by the Civil Court (J.D.), Gandhinagar in Regular Civil Suit No.353/93 and therefore, it is observed that merely on the basis of the revenue Entry No.4629 in favour of the respondent No.4, she will not be having any right in the land in question as the Entry in the revenue record is only for fiscal purpose for the purpose of collecting the revenue and to show

the prima-facie possession and admittedly the respondent No.4 is in possession of the land in question, however, in the revenue record an additional entry can be made that the Entry in question is subject to the ultimate outcome of the judgment and order that may be passed by the Civil Court (J.D.), Gandhinagar in Regular Civil Suit No.353/93.

5.Accordingly, the present Special Civil Application is dismissed however, the revenue authority is directed to make an additional entry in the revenue record that the aforesaid Entry No. 4629 is subject to the ultimate outcome of Regular Civil Suit No.353/93 pending in the Court of Civil Judge (J.D.), Gandhinagar and that necessary entry will be made on the basis of the judgment and decree that may be passed by the Civil Court (J.D.), Gandhinagar in the aforesaid Civil Suit.

6.With these observations and direction, the present Special Civil Application is dismissed. Rule is discharged however, there will be no order as to costs.

(M.R.Shah, J.)

kdc.

